UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONNA ROBINSON,

Plaintiff,

v.

CAROLYN COLVIN, Acting Commissioner of Social Security,

Defendant.

CASE NO. C13-5714 BHS

ORDER DECLING TO ADOPT THE REPORT AND RECOMMENDATION AND REMANDING TO COMMISSIONER

This matter comes before the Court on the Report and Recommendation ("R&R") of the Honorable John L. Weinberg, United States Magistrate Judge (Dkt. 21), and Plaintiff Donna Robinson's ("Robinson") objections to the R&R (Dkt. 22).

On August 8, 2014, Judge Weinberg issued the R&R recommending that the Court affirm the decision of the Administrative Law Judge ("ALJ") that Robinson was not disabled. Dkt. 21. On August 22, 2014, Robinson filed objections. Dkt. 22.

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or

modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

The sole issue in this case is whether 15,000 jobs in the nation economy constitute a significant amount. The Ninth Circuit has "never set out a bright-line rule for what constitutes a 'significant number' of jobs." *Gutierrez v. Comm'r of Soc. Sec.*, 740 F.3d 519 (9th Cir. 2014). In the absence of a "bright line," courts have wide ranging opinions. *See Moncada v. Chater*, 60 F.3d 521, 524 (9th Cir. 1995) (per curiam) (64,000 nationwide jobs significant); *Thomas v. Barnhart*, 278 F.3d 947, 960 (9th Cir. 2002) (622,000 nationwide jobs significant); *Moore v. Apfel*, 216 F.3d 864, 869 (9th Cir. 2000) (125,000 nationwide jobs significant); *Johnson v. Chater*, 108 F.3d 178, 180–81 (8th Cir. 1997) (10,000 national jobs significant); *Beltran v. Astrue*, 700 F.3d 386, 390 (9th Cir. 2012) (1,680 nationwide jobs insignificant). In *Gutierrez*, the court held that "the ALJ's finding that 25,000 national jobs is sufficient presents a close call." *Gutierrez*, 740 F.3d at 529. Although not a bright-line rule, *Gutierrez* provides additional guidance on this issue.

In this case, the ALJ issued her decision without the benefit of *Gutierrez*. The ALJ's decision was issued in 2011 and *Gutierrez* was published in 2014. If the number 25,000 is a "close call," one may reasonably infer that a number approximately half that amount would not qualify as significant. While the Court is unable to conclude that the ALJ's finding was clearly erroneous at the time it was rendered, the Court concludes that additional fact finding is necessary in light of current case law. *Barker v. Secretary of Health & Human Services*, 882 F.2d 1474, 1480 (9th Cir. 1989) ("[W]hether there are a

significant number of jobs a claimant is able to perform with his limitations is a question of fact *to be determined by a judicial officer*." (quoting *Martinez v. Heckler*, 807 F.2d 771, 775 (9th Cir.1987) (amended)).

Therefore, the Court having considered the R&R, Robinson's objections, and the remaining record, does hereby find and order as follows:

(1) The Court **DECLINES to adopt** the R&R;

(2) The matter is **REMANDED** to the Commissioner for further proceedings consistent with this opinion; and

(3) The Clerk shall close this case.

Dated this 25th day of September, 2014.

BENJAMIN H. SETTLE
United States District Judge